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J. Peter Bragg

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UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:)	MM DOCKET No.: 99-153
)	
READING BROADCASTING, INC.)	File No.: BRCT-940407KF
)	
For Renewal of License of)	
Station WTVE(TV), Channel 51)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS)	File No.: BPCT-940630KG
CORPORATION)	
)	
For Construction Permit for a)	
New Television Station to)	
Operate on Channel 51,)	
Reading, Pennsylvania)	

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Before the
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Washington, D.C. 20554

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Courtroom TWA363
FCC Building
445 Twelfth Street, S.W.
Washington, D.C.

Friday,
October 1, 1999

The parties met, pursuant to the notice of the
Judge, at 10:01 a.m.

BEFORE: HONORABLE RICHARD L. SIPPEL
Judge

APPEARANCES:

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Federal Communications Commission
Mass Media Bureau
445 Twelfth Street, S.W.
Washington, D.C. 20554

1 I N D E X

2 Page

3 The Honorable Richard L. Sippel 85

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10 Hearing Began: 10:01 a.m. Hearing Ended: 10:44 p.m.

JUDGE SIPPPEL: Good morning.

JUDGE SIPPEL: Please be seated. This is a

MR. HUTTON: Good morning.

MR. BECHTEL: Gene Bechtel and Harry Cole.

MR. SHOOK: James Shook.

MR. SHOOK: Good morning, Your Honor.

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1 a disagreement; and then secondly, as to public witnesses.

2 I am not going to try to resolve public witnesses
3 this morning, but I want to have a continuing dialogue on
4 this. And I -- I mean, I definitely have my own ideas. But
5 let's take them one stage at a time or one step at a time.

6 With respect to discovery, I received a motion to
7 compel production of documents. And I know I have -- things
8 have been on kind of a shortened schedule. So I am familiar
9 with the issues. I don't have an opposition in hand. But I
10 am prepared to deal with what I have. Is there an
11 opposition around that I missed, Mr. Hutton?

12 MR. HUTTON: No, it is not due yet.

13 JUDGE SIPPEL: It's not due yet?

14 MR. HUTTON: No.

15 JUDGE SIPPEL: Well, we are going to have to
16 resolve this. Are you prepared to go forward on it this
17 morning?

18 MR. HUTTON: I am prepared to discuss it, sure.

19 JUDGE SIPPEL: Okay. It seems to me based on the
20 motion to compel that there are only two categories of
21 documents as to which there is a contesting -- that it is
22 contested at this point. And one are the minutes and the
23 second is with respect to financial information, that is,
24 the information that -- documents that would reflect income
25 and expenses. Who is going to address this on behalf of

1 Adams?

2 MR. BECHTEL: If it please the Court.

3 JUDGE SIPPEL: Mr. Bechtel?

4 MR. BECHTEL: Mr. Hutton and I did talk yesterday
5 after I filed the protective motion produced. With regard
6 to the minutes, I don't think we have advanced the cause at
7 all. We would like all of the minutes, governance and
8 policy meetings, for the entire five-year period so that --
9 for the reasons stated in my motion. And Mr. Hutton has --
10 did not agree with that.

11 With regard to finances, we may have made some
12 progress. The language in our request was quite broad. And
13 I shared with Mr. Hutton that we were primarily interested
14 in financial statements such as income and expense
15 statements, and not underlying records and ledger entries
16 and so on.

17 And I don't know -- I think Mr. Hutton is going to
18 take that under advisement. So that is the status insofar
19 as we are concerned.

20 JUDGE SIPPEL: Do you think of -- would it make
21 sense to give a little more time for discussion, at least
22 with respect to the expense items, the -- I mean, it looks
23 like -- can you make progress without my requiring an order
24 at this point?

25 MR. BECHTEL: Well, I am not sure. Perhaps Mr.

1 Hutton is prepared to respond. We chatted and he was going
2 to take it under advisement.

3 JUDGE SIPPEL: All right.

4 MR. HUTTON: Your Honor, we don't believe it is
5 relevant. If you disagree and are inclined to find this
6 category relevant, then we would ask you to limit it to
7 annual statements of income and expenses for 1989 through
8 1994.

9 JUDGE SIPPEL: 1989 through 1994.

10 MR. HUTTON: Right.

11 JUDGE SIPPEL: That would cover the period, right?
12 Would that be appropriate? Would that be adequate?

13 MR. BECHTEL: That's fine.

14 JUDGE SIPPEL: All right. Then the financials --
15 I will refer to them broadly as financials -- there
16 shouldn't be anything further to discuss on those. Let's
17 move on to the minutes. Mr. Shook, I would have -- if it
18 hadn't been resolved at this point, I would have involved
19 you in this issue. But since it has been resolved, let's
20 move on to the next one.

21 The minutes, again, the minutes have to do with,
22 what, who was involved with programming decisions? It's a
23 further clarification of just what you are dealing with in
24 terms of personalities?

25 MR. BECHTEL: Yes, indeed, sir. As I understand

1 Reading's theory of their case, it is that their local
2 ownership is a factor that should be in their favor. And so
3 what we would like to do is probe in the way of getting
4 documents and also in the way of examining witnesses the
5 precise nature of the role of the local owners and the
6 operation.

7 And to be given only minutes which had a reference
8 to programming may be the tip of the iceberg and the minutes
9 that have no references to programming is the iceberg. I
10 don't know that, but I sure am hoping.

11 JUDGE SIPPEL: It doesn't necessarily mean that
12 just by seeing them, it doesn't mean necessarily that you
13 would use them all. You just want to examine the minutes at
14 this point.

15 MR. BECHTEL: Well, I want to see them and then
16 figure out whether there is any use for them.

17 JUDGE SIPPEL: Right. No, I understand. But, I
18 mean, at this stage really, all you want to do is you want
19 to examine them.

20 MR. BECHTEL: I will know what I want to do with
21 them once I see them.

22 JUDGE SIPPEL: Right, right. Now, what about just
23 going over to Mr. Hutton's office or having somebody go over
24 there and just examine the minutes. And then if there is --

25 MR. BECHTEL: I will be there Monday and Tuesday.

1 I will be happy to do it.

2 JUDGE SIPPEL: And then if there is any
3 disagreement, I mean, then -- if you want certain ones as to
4 which there is a disagreement, then I could resolve it at
5 that point. What would -- how would that be, Mr. Hutton?

6 MR. HUTTON: I don't agree, Your Honor.

7 JUDGE SIPPEL: Why? You don't want him to see
8 anything?

9 MR. HUTTON: Well, let me put it this way. There
10 is no dispute over the fact that they asked for initially
11 all documents relating to programming of Reading
12 Broadcasting, Inc. from 1989 to 1994. We never objected to
13 that request for documents.

14 And I have told Mr. Bechtel that because that is
15 the key relevant issue in this case, that to the extent that
16 any discussion of programming occurs in those minutes of
17 meetings, that I deem it to be within that document request
18 and I will produce those minutes.

19 To the extent that it does relate to programming,
20 I don't understand why they are considered possibly
21 relevant. They deal with matters of corporate strategy,
22 corporate governance, et cetera.

23 The Board of Directors does not sit down and say,
24 "Okay, next week we are going to start running a new
25 children's program." They don't get into that type of

1 issue. If they did get into that type of issue, then it
2 would be covered by the initial document request as to which
3 there is no dispute.

4 With respect to the claim that local ownership
5 comes into play here, it is a class mixture of apples and
6 oranges. The local ownership is relevant as to local
7 residents of stockholders of the company, not the directors
8 of the company. So the claim that these minutes relate to
9 local ownership is just a complete misstatement as far as I
10 am concerned.

11 JUDGE SIPPEL: Well, yes. Why don't -- let me get
12 this side finished and then I am going to come to Mr. Shook
13 on this.

14 MR. SHOOK: Fine.

15 JUDGE SIPPEL: Go ahead, Mr. Bechtel. You are on.

16 MR. BECHTEL: Oh, I'm sorry. Okay.

17 JUDGE SIPPEL: You are on.

18 MR. BECHTEL: Two things. Number one, we want
19 minutes of stockholders meetings. Number two, we want
20 minutes of the meetings of the directors because the
21 directors aren't local residents.

22 JUDGE SIPPEL: Okay.

23 MR. BECHTEL: The second point -- and the
24 directors are also stockholders, exactly. Now, the second
25 thing I want to say is it is related to programming per se.

1 Another position that Reading says they are going
2 to take is that -- they have already taken -- is that during
3 the first half of the term, they had financial problems.
4 And so, therefore, you should be kinder in dealing with that
5 and take a closer look at the second half where they didn't
6 have financial problems.

7 We are asking for financial statements. We are
8 going to get some information on that. The minutes of the
9 meetings of the directors and the stockholders may also help
10 us with that.

11 And once we have that backdrop, we are going to
12 have testimony, cross examination of directors and officers
13 who were present at those meetings. And this will flesh out
14 our understanding of the legitimacy of the position that
15 they have said they are going to take.

16 JUDGE SIPPEL: Let me see if I can put this in a
17 hypothetical context so I understand where you are going
18 with this. Assuming -- we know that there is a period of
19 time that they were in bankruptcy and receivership. And it
20 is a possibility that there might be some argument made
21 that, "Well, we couldn't really bring our programming up to
22 speed at that particular time or we were having some" --
23 "they are going to see some inconsistencies between
24 programming there and programming later, and the reason
25 being is because we were having these" -- "this particular

1 situation."

2 You want to see whether or not the minutes explain
3 what that situation was or whether or not there is anything
4 inconsistent between what they are saying and what was
5 actually happening. Is that --

6 MR. BECHTEL: That's correct.

7 JUDGE SIPPEL: -- essentially -- I mean, you maybe
8 have some more ideas, too. But, I mean, that is essentially
9 it, the relevance. I am talking about relevance of these.

10 MR. BECHTEL: Yes, sir.

11 JUDGE SIPPEL: All right. What does the Bureau
12 say about this, Mr. Shook?

13 MR. SHOOK: The test for discovery of documents is
14 very broad. Unless it can be clearly demonstrated that the
15 documents that are the subject of this request are
16 irrelevant, I would think they would be -- they should be
17 made available for review.

18 JUDGE SIPPEL: Yes, well, but what about the
19 hypothetical that I just articulated? Does that make sense
20 to the -- I mean, is it -- do you see a relevancy, I mean,
21 in terms of the specifics of this case? I know that there
22 is a broad standard. But, I mean, in terms of what we are
23 talking about here, does this make sense to the Bureau?

24 MR. SHOOK: There may be --

25 JUDGE SIPPEL: Would you like to see those? Would

1 you like to see those minutes?

2 MR. SHOOK: I suppose I probably wouldn't have the
3 same interest that Adams would. I don't think we are going
4 to be, you know, aggressively pursuing that. We are going
5 to be watching it. We are going to be commenting in our
6 proposed findings and conclusions once the evidence is in.
7 At this stage, we are basically leaving it to the parties
8 themselves to flesh out through the depositions, through the
9 documents, through their interrogatories what their
10 respective cases are, what their respective theories are.

11 JUDGE SIPPEL: But if I were to order the
12 production of these minutes, for them to be inspected, and
13 the issue being what it is, would the Bureau want to see
14 those -- I mean, would you want to see those minutes before
15 they were introduced into evidence in this case? I mean, do
16 you think that it would be worth looking at from the -- or
17 is your interest that far anyway?

18 MR. SHOOK: Our interest is not that great in that
19 aspect of it.

20 JUDGE SIPPEL: Okay. All right. Let me hear from
21 Mr. Hutton then one more time.

22 MR. HUTTON: Well, I would just reiterate, there
23 is no dispute over whether program-related discussions
24 should be made available. We are happy to provide all
25 copies of minutes that contain references to programming.

1 And if you want, Your Honor, I would be happy to produce the
2 minutes to you for in-camera inspection to ensure that we
3 cover all references to programming.

4 But to require us to open up our corporate books
5 and turn everything over to Adams, which has shown an
6 interest in everything but the programming of WTVE, I think
7 is just unwarranted.

8 JUDGE SIPPEL: Well, you really haven't addressed
9 Mr. Bechtel's argument. He is saying that there is an issue
10 of fact here. And that -- this is not -- this is a little
11 bit of a variance from, say, your run-of-the-mill renewal
12 situation in the sense that your client was in receivership.
13 Am I right, or was it receivership?

14 MR. HUTTON: Bankruptcy.

15 JUDGE SIPPEL: Bankruptcy. So there is an element
16 here, a factual element here in terms of whether or not the
17 hardships, if you will, of being in bankruptcy in any way
18 impacted on the quality of -- not the quality of the
19 programming, but the programming as it was broadcast.

20 MR. HUTTON: And, again, to the extent that the
21 minutes of the directors meetings discuss programming, they
22 will get that discussion. And what they are asking for
23 though is much broader. They are asking for everything.

24 And I am saying that to the extent that the
25 minutes of the meetings relate to programming, which they

1 would if there is a discussion between -- among the
2 directors as to, "Are our financial difficulties creating
3 problems for us in doing programming?", if that kind of
4 discussion would come into play, it would be produced.

5 So to the extent they are asking for financial
6 information, they will get it through the -- your order that
7 we produce the income and expense statements. They will get
8 that background. And they can ask in the depositions of any
9 of the principals, you know, "What was the impact of the
10 financial condition of the bankruptcy on programming
11 decisions?"

12 So the extent that they need information about
13 discussions among the directors as to how the financial
14 condition of the station impacted programming, they will get
15 it because we are producing everything that relates to
16 programming.

17 JUDGE SIPPEL: But as I am hearing your argument,
18 they are looking -- they don't think that they can get the
19 information -- be sure that they have the information, all
20 the relevant information, just by making a cut as to whether
21 or not the word, "programming", or the ultimate subject of
22 the minutes is programming per se, as I am hearing them
23 anyway.

24 They are saying that you've got to see what --
25 during that period of bankruptcy, they have to have a good

1 idea as to what the company was actually going through if
2 they are going to try to justify that condition for some
3 lesser quality or lesser degree in their programming.

4 In other words, if there is a defense being
5 offered by Reading with respect to what they did during that
6 period and what they did during a later period, Adams wants
7 to see what was going on. Am I saying it correctly, Mr.
8 Bechtel? Maybe I should ask you to say it.

9 MR. BECHTEL: Hypothetical, supposing in the first
10 half of the license term, they were giving bonuses to
11 members of the Board of Directors, to Mr. Parker, whoever.
12 And then the second half of the term, they stopped giving
13 those bonuses.

14 That wouldn't mention programming at all, and yet
15 it would be relevant as the dickens to the argument that
16 they were making that this bankruptcy proceeding, which was
17 a Chapter 11 bankruptcy proceeding, was the problem why
18 their programming sagged so badly in the first half of the
19 term.

20 JUDGE SIPPEL: How would you respond to that
21 point?

22 MR. HUTTON: My response is that they are welcome
23 to ask -- they have not asked any of these questions in
24 depositions. They are welcome to ask those questions in
25 depositions to probe into whether or not the financial

1 condition of the station affecting programming decisions.

2 Their -- they can certainly ask that question.

3 And if you think that the minutes may be relevant, then what
4 I would suggest is that I produce them to you for in-camera
5 review and then you can designate the elements that are
6 relevant.

7 MR. BECHTEL: May I, sir?

8 JUDGE SIPPEL: Please.

9 MR. BECHTEL: If the questions in a deposition are
10 relevant, then the underlying documents relating to the same
11 subject have to be relevant by definition.

12 JUDGE SIPPEL: Yes. What I think -- I think what
13 Mr. Hutton is saying is that you can use the deposition for
14 discovery. And then if you hit something and there is a
15 minute to reflect it, then -- one way or the other, then
16 they will produce the minutes.

17 I don't -- I am not satisfied the way this is
18 going at all. I think that my proposal -- I don't want to
19 be the one certainly making the first cut on discovery
20 relevancy. If there is a document that is going to be
21 produced and there is a question about a privilege, you
22 know, then I would want to participate. I would have to
23 participate.

24 But I still think that my suggestion was the best,
25 and that is let them see -- let Mr. Bechtel or his designee

1 come over to your office, take a look at the documents -- at
2 the minutes, clip the minutes that he feels he wants copies
3 of for further use, and if there is an objection to that,
4 then I can get into it.

5 But I -- I mean, at least I don't see where
6 Reading is being prejudiced by that procedure. He is not
7 going to have the -- he is not actually going to walk off
8 with the minutes until there is a resolution of it. And,
9 you know, I am taking his argument at good faith.

10 I am assuming he is not going to want to take
11 every single lick of paper. He is only going to want those
12 that are relating to this theory, this litigation theory
13 that we are talking about here.

14 Now, I mean, obviously that is the direction I am
15 heading. I want to be sure I am being fair to Reading,
16 however, on this. I have got a motion to compel. And the
17 way I conceived this process this week was because of
18 deposition schedules and everything else, I am trying to
19 obviously move things along a little bit more.

20 I thought that there would be a 24-hour period
21 within which Reading would file an opposition if you cared
22 to. As I indicated in my order, I am not -- you know, I can
23 handle this without pleadings. But Adams elected to file
24 the motion to compel.

25 And under the earlier schedule that I set,

1 everything just got changed one day because we went from
2 Thursday to Friday. But I would have expected your
3 opposition to be in last night or early this morning.

4 MR. HUTTON: Your Honor, I don't feel prejudiced
5 by virtue of not having filed the opposition.

6 JUDGE SIPPEL: All right. Then I will make -- my
7 ruling will be as I have indicated. I mean, I will reduce
8 this to a written order. But -- and I will leave it up to
9 counsel to arrange for how you want to do it.

10 But the thrust of the -- it is like a Rule 34
11 examination on the premises of documents. And it will be in
12 Mr. Hutton's office. It will be sometime next week. And I
13 am hoping that you will be able to resolve amicably with
14 perhaps some reluctance on Mr. Hutton's part, but that --
15 you will be able to work out what the universe of those
16 minutes are.

17 If there are any minutes that are in contention,
18 then we are back here as, you know, soon as we can get
19 something set up. And I will look at them in camera and
20 making a resolution on it. So that takes care of the
21 finances -- the financial data and that takes care of -- at
22 least to this point, it takes care of the minutes.

23 Now, is there anything else that, Mr. Bechtel, you
24 want to talk to about your documentary discovery? From what
25 was filed with me on the motion to compel, it seems like all

1 the other categories were under control at least --

2 MR. BECHTEL: Exactly.

3 JUDGE SIPPEL: Okay.

4 MR. BECHTEL: No, these were the issues.

5 JUDGE SIPPEL: This was it. All right. How was
6 it -- I know that I just signed a rash of subpoenas going
7 out to public witnesses. When I say a rash, it was the 20
8 witnesses that were identified by Reading. And I just want
9 to just get a feel as to how our deposition is going.

10 Aside from those depositions now which are still
11 to be done, have the -- is there much of a deposition
12 schedule left with respect to principals? Let me start with
13 you, Mr. Bechtel.

14 MR. BECHTEL: The deposition schedule with respect
15 to principals is set. We are going to be busy this coming
16 week, four days, on five of them. And then there is a sixth
17 one that we will take the following week. And then there is
18 the former principal who is now an ex-employee whom we are
19 going to take the final week, Mr. Vendetti.

20 And there is one other witness that Mr. Cole and I
21 have under consideration that we are not sure whether we are
22 going to notice. But if we do, then we will notice him
23 immediately for the final week.

24 And as far as we are concerned, that covers the
25 principals. So they are on schedule. And we have worked

1 together to get mutual times and so on.

2 JUDGE SIPPEL: What should be the closing date
3 then on that phase of the deposition discovery?

4 MR. BECHTEL: Closing date is Friday, October
5 29th.

6 JUDGE SIPPEL: Now, I know that is the closing
7 date of discovery that I have set. But essentially, that is
8 your target date to get all these principals --

9 MR. BECHTEL: No, that's the target date. The
10 last week commencing the 25th is when we will take Mr.
11 Vendetti and the other witness should we notice him or her.
12 The preceding is when we've noticed the 20 public witnesses.

13 JUDGE SIPPEL: Right.

14 MR. BECHTEL: And then the preceding week which is
15 next week and the following week -- we filled next week with
16 our depositions. And the following week, we have one
17 deposition with a gentleman in Peoria. Maybe we will all be
18 in Peoria. And then I believe that leaves some time for the
19 depositions in Chicago which Reading Broadcasting wants to
20 take.

21 So that schedule is in good shape. I want to
22 address Adams' public witnesses. And that is a different
23 issue.

24 JUDGE SIPPEL: Right. I have got that on my list
25 to cover, also.

1 MR. BECHTEL: But in any event, I have responded
2 to your question.

3 JUDGE SIPPEL: Yes, you did. Yes, you did.

4 MR. BECHTEL: The principals are covered and their
5 public witnesses are covered.

6 JUDGE SIPPEL: Now, how about from Reading's side
7 on your deposition discovery?

8 MR. HUTTON: I generally agree with what Mr.
9 Bechtel said. I have been meaning to talk to him after our
10 session today to talk about the schedule because I have been
11 on the phone yesterday and today with a number of people.
12 And there may be some scheduling issues that we need to sit
13 down and work out. But my plan is that we can and will sit
14 down and work those out.

15 JUDGE SIPPEL: And you think that the 29th of
16 October then will be -- it is a doable date.

17 MR. HUTTON: Based on what I know now, I thin it
18 is.

19 JUDGE SIPPEL: And how about the public witnesses?
20 Now, I know that the subpoenas are going out. But, I mean,
21 is there much -- is there any expectation that there is
22 really going to be any resistance to the subpoenas by the --

23 MR. HUTTON: I don't have any information on that.

24 MR. COLE: Your Honor, if I might respond to
25 that -- and Mr. Bechtel is the one who has been honchoing

1 it. But the person in our office who actually physically
2 types up the things and gets them out the door is more under
3 my supervision. And I was out of the office yesterday.

4 But when I called in, she said she had received a
5 number of telephone calls from persons who had been served I
6 believe with -- and I believe she was referring to the
7 community -- the public witnesses asking questions about it,
8 appearing not to know very much about it and expressing
9 concern or, you know, asking a lot of questions.

10 And I don't know what that means. And I did not
11 speak with them and I have not spoken with her today to find
12 out more about it. But they may have called Mr. Hutton in
13 the meantime. I don't know.

14 MR. HUTTON: I have not received any calls.

15 MR. COLE: Okay. But we have received, I am told,
16 several phone calls from some of the folks who received
17 subpoenas over the last couple of days who apparently
18 expressed not -- concern probably isn't an accurate -- but
19 who just -- who were curious as to what was going on. And
20 they did not appear to have been kind of in the loop, so to
21 speak, in expecting documents of this nature.

22 JUDGE SIPPEL: Certainly a very plausible reaction
23 from anybody who receives a subpoena, obviously.

24 MR. COLE: Yes, sir.

25 JUDGE SIPPEL: If they don't know ahead of time

1 when it is coming in particularly. All right. So we will
2 get to your public witnesses in just a minute. I just want
3 to ask Mr. Shook, is there anything you want to add to this?
4 I am just trying to get --

5 MR. SHOOK: No, Your Honor.

6 JUDGE SIPPEL: Okay. How about the public
7 witnesses now from Adams?

8 MR. BECHTEL: And incidentally, your order calling
9 for testimonial depositions that are then submitted as a
10 part of the case, I think as based upon my experience in
11 other cases, is a good way to proceed. It is a fair way to
12 proceed. Lawyers from both sides can work to formulate what
13 the witnesses are going to say. And yet you don't have a
14 bunch of people traipsing into your courtroom.

15 JUDGE SIPPEL: Well, I don't mind it. It's just
16 that I think -- I mean, from the witnesses' standpoint, I
17 mean, these are people's lives who are being disrupted. And
18 as you say, they don't really have the same keen interest in
19 it that the parties do and that I do and that Mr. Shook
20 does. So -- go ahead. I am sorry.

21 MR. BECHTEL: Exactly. And at times, it is
22 difficult to get two contending sides to stipulate as to
23 what their respective witnesses are going to say. So if you
24 get it on a deposition transcript, and we can argue
25 admissibility if there is an issue in that.

1 But -- so in any event, we are approaching the 20
2 witnesses that we have been given by Reading testimonial
3 depositions, prepared to take the transcripts and have them
4 presented to you as a part of the case.

5 We have a problem with our no more than ten public
6 witnesses. And the problem is this. When we started this
7 odyssey back in the summer, we thought we were going to get
8 an identification of their witnesses at an earlier date than
9 we did. We got names at some point in August -- I'm sorry.
10 We got names of community organizations, a 100-and-some
11 community organizations in August. It wasn't until
12 September that we got the names of the people.

13 And I'll give you the date of this. On August
14 20th, we had a meeting with counsel in which we expressed
15 concern that we needed the names of their witnesses. On
16 August 23rd, we filed a confirming second interrogatory
17 request stating the urgency and asking them to be produced
18 in seven days. On August 30th, we got a letter from them
19 saying it would take the full 14 days under the rule. And,
20 in fact, it took a whole month. And we didn't get the names
21 until September 23rd which puts us in this position.

22 And I am not criticizing Reading. Reading had
23 apparently a lot of organizations to call through and get
24 their 20 best people. But it so happens that this is a
25 problem for us now because working just as fast as we can,

1 we got our 21-day notices and subpoenas out and barely
2 within the date for close of the record -- close of the
3 discovery period.

4 This is the first time we know who their witnesses
5 are. We have to do our homework. We are dealing in their
6 backyard, not ours. We have to go looking for people that
7 will be responsive to this. And we are out of time in terms
8 of giving you the depositions that you want.

9 So what I propose to handle this is that our
10 public witnesses be treated as rebuttal witnesses, which is
11 accurate anyway. And that we notice depositions, not
12 discovery depositions, testimonial depositions as soon as we
13 can based upon our information that we are getting. And
14 that we do so in time for the transcripts to be available as
15 rebuttal things. That is not a whole lot of time, but it is
16 at least something we can live with.

17 We think that is fair to Reading because Reading
18 will be participating in those depositions, have 21 days
19 notice. And they are going to be able to protect
20 themselves. And it is in keeping with your desire that we
21 do all that work up in Reading and then bring to you
22 testimonial depositions which is the very best way to
23 present their testimony.

24 So for that reason, what I am asking is that -- I
25 am proposing is that the testimonial depositions of our no

1 more than ten witnesses be taken after the close of
2 discovery, but in sufficient time so that the transcripts
3 will be available without delaying the rebuttal sessions.

4 And I will close this by pointing out that that is
5 a lot more notice than most people get for rebuttal
6 purposes. Most people get pretty quick short notice. They
7 are not sure what the rebuttal terms are going to be until -
8 - with little -- which represent only a little lead time.

9 Here, they are going to get the same opportunity
10 we have had. Twenty-one days notice here and defend their
11 cause as they can with that.

12 JUDGE SIPPEL: Well, let's see. What does Mr.
13 Hutton say about that, sir?

14 MR. HUTTON: Well, this is the first time I have
15 heard this proposal. I don't understand the nexus between
16 our activities and identifying public witnesses and his
17 ability to identify public witnesses. It seems to me that
18 they could have done the same thing we have been doing which
19 is identify people who are knowledgeable about the station's
20 programming and arrange them to testify as to that issue.

21 Essentially, it sounds to me like he is asking to
22 extend the discovery schedule into the period in which we
23 are supposed to be preparing for the hearing. And I am very
24 concerned that we are going to end up compromising our
25 ability to prepare for the hearing by preparing our direct

1 written cases and preparing our trial briefs.

2 JUDGE SIPPEL: That is not going to happen. You
3 are right. I mean, it slips past the 29th. And everything
4 is geared off of that 29th as being the cut-off date so that
5 people can get ready for -- I think that it's going to be
6 more than a one-day hearing.

7 So I am -- I am listening to really both sides
8 very carefully because I -- in a sense, I am taken with the
9 idea of considering or treating these as rebuttal witnesses
10 which to me makes sense anyway because I think that is
11 essentially what -- you know, what a challenging applicant
12 is going to look for. I mean, that to me would be a very
13 logical trial strategy in a situation like this.

14 And, I mean, maybe they won't be able to find them
15 or the ones that they find might not be that good or it may
16 turn out that it is going to be a half-and-half proposition,
17 you know, that in other words, they will get half of what
18 they want from the witness, but you will get half of what
19 you want from the witness, all of which is telling me that
20 something like this does need a little bit of time if it is
21 going to be done with any kind of deliberation.

22 If they are treated as rebuttal, well, it is not
23 going to affect the way -- the credibility of their
24 testimony. If they come in and they testify to relevant
25 issues and they testify in a credible way, it is good

1 evidence.

2 Actually, you could -- I think what I would have
3 to do, if I went strictly down the rebuttal route with you,
4 Mr. Bechtel, then we would have to -- some how or other, we
5 would have to have a break after the case-in-chiefs came in
6 with an opportunity to then go out and take these
7 depositions and then, you know, have the session -- they
8 will have to have until after the first of the year to
9 receive them.

10 I mean, when I say receive them, they are going to
11 come in as -- it is anticipated that they are going to come
12 in as documentary exhibits as opposed to live witness
13 testimony anyway. It might delay it somewhat in proposed
14 findings. But it would answer the -- I think Mr. Hutton has
15 got a very legitimate concern.

16 In other words, in preparing for a hearing under
17 the -- what I think is the -- is a pretty challenging
18 schedule that we have set down here, and then at the same
19 time being -- taking -- going out and taking depositions out
20 of town for ten or some-odd witnesses on a rebuttal basis is
21 asking -- maybe it isn't asking that much. But I think
22 there is a way of getting around it.

23 I am going to hold that one -- I am just going to
24 hold it in abeyance and we will have another status meeting
25 on it. But I think what I would like to do is at least by

1 the time of the admissions session, that there be -- that we
2 have in advance if the admissions session certainly a list
3 of your perspective witnesses, public witnesses, and then
4 make a determination at the admissions session in terms of
5 when those depositions are going to be taken.

6 That's where I am inclined to go with this. I --
7 unless you come up with another procedure that is going to -
8 - either in further discussion with counsel, you come up
9 with something else that is agreeable to both of you. But
10 Mr. Hutton's concern is a primary concern; that is, he has
11 got a right to rely on the 29th, you know, or one or two
12 days thereafter being that's it, we now move into the trial
13 preparation stage.

14 Let's work with that for the time being. But, I
15 mean, I am pretty much resigned to it. I don't see why the
16 case should be, you know, thrown off track in any way just
17 for the purpose of this. It is going to come in. It is
18 going to come in in a deliberate way. And, I mean, your
19 side of the story on the public witnesses is it is going to
20 come in in a deliberate way.

21 And I think, again, I have to concern myself with
22 the public witnesses. And there may be some continuances
23 with their -- from those sides that we are going to have to
24 accommodate, even on depositions. People sometimes the day
25 before call and say that they have got a problem with an

1 aunt someplace that has got a problem. So we have got to
2 think of that.

3 I want to leave it on that basis for now if -- you
4 know, certainly any counsel or both sides having an
5 opportunity to come back to me with some other approach.
6 Does that basically answer your concern, Mr. Hutton? I
7 don't know if you like what I said. But does it accommodate
8 what you were concerned about?

9 MR. HUTTON: It does address my concern. I
10 guess -- when is the admissions session?

11 JUDGE SIPPEL: December the 4th I believe. I'll
12 tell you just to be sure of that. But it is very soon
13 before the hearing. I take that back, December the 2nd, and
14 the hearing is December the 7th.

15 MR. HUTTON: I guess my -- what I would request is
16 that the adverse public witnesses be identified to us before
17 the close of discovery.

18 JUDGE SIPPEL: All right. I think that is fair.
19 I did -- when I -- I did indicate that you would have a list
20 of these before the admissions session. I was just going to
21 use the admissions session for purposes of, you know,
22 getting a schedule set.

23 MR. HUTTON: Okay.

24 JUDGE SIPPEL: So I think that is a good point.
25 Is there any reason why you can't have identified these ten

1 witnesses by the 29th of October?

2 MR. BECHTEL: I think that's reasonable, sir.

3 JUDGE SIPPEL: Okay. That is a good point. That
4 is okay.

5 MR. BECHTEL: Now, we are talking about adverse
6 witnesses in the sense of local public witnesses.

7 JUDGE SIPPEL: I don't know what other kind of
8 rebuttal witnesses there is. You know, if it is truly a
9 rebuttal witness, this is going to be an adverse witness.
10 You know, how it comes out in the deposition is another
11 story or it could be.

12 MR. BECHTEL: No, I was thinking about our case-
13 in-chief.

14 JUDGE SIPPEL: Okay. Yes, you've got it. You've
15 got that, Mr. Bechtel. Let me make a note of this. Okay.
16 October -- okay, 29 October is going to be the
17 identification. The admissions session, we will schedule
18 for depositions. I mean schedule in a sense that I will
19 assign a parameter of a time frame within which I will
20 expect that to be completed. And so you will know -- and I
21 can get the subpoenas signed at that time, too, so we can
22 have that all taken care of.

23 All right. I think that is as much as I wanted to
24 accomplish today. Is there anybody that has anything else?

25 MR. BECHTEL: We have nothing, sir.

1 JUDGE SIPPEL: Mr. Hutton?

2 MR. HUTTON: No, sir.

3 JUDGE SIPPEL: Mr. Shook?

4 MR. SHOOK: Nothing.

5 JUDGE SIPPEL: All right. Then we are in recess
6 until further call. Thank you.

7 (Whereupon, at 10:45 a.m. on Friday, October 1,
8 1999, the hearing in the above-entitled case was adjourned.)

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REPORTER'S CERTIFICATE

FCC DOCKET NO.: 99-153

CASE TITLE: READING BROADCASTING, INC. AND
ADAMS COMMUNICATIONS CORPORATION

HEARING DATE: October 1, 1999

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date:

10-1-99

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